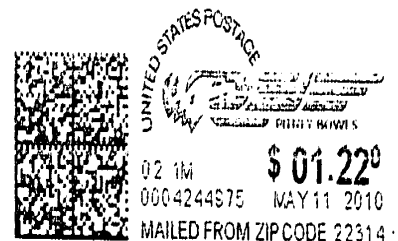


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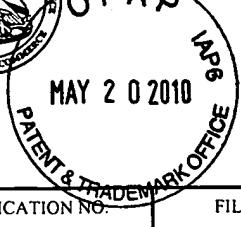




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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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05/11/2010

EXAMINER

HALE, GLORIA M

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/679,088  
Filing Date: October 03, 2003  
Appellant(s): WILLIAMS, MARCUS K.

**MAILED**

**MAY 11 2010**

**GROUP 3700**

W. Edward Johansen  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 11-12-2009 appealing from the Office action  
mailed 10-16-2007.

**(1) Real Party in Interest**

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The following is a list of claims that are rejected and pending in the application:

Claim 3 is the sole claim in the case which is rejected and currently pending.

Claims 1 and 2 are canceled.

**(4) Status of Amendments After Final**

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

**(5) Summary of the Claimed Subject Matter**

No comment on the summary of the claimed subject matter.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

**WITHDRAWN REJECTIONS**

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner. The 35 U.S.C. 112, second paragraph rejection raised in the Final Rejection is withdrawn per the amendment to claim 3 filed November 12, 2009.

**(7) Claims Appendix**

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

**(8) Evidence Relied Upon**

|           |         |         |
|-----------|---------|---------|
| 5,388,271 | Sessoms | 2-1995  |
| 5,134,726 | Ross    | 8-1992  |
| 4,089,065 | McGee   | 5-16-78 |

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sessoms (US 5,388,271) in view of Ross (US 5,134,726) and McGee (US 4,089,065).

Sessoms discloses an upper torso shirt garment with arm portions and a plurality of protective pads wherein a shirt is constructed to cover and protect the upper torso and arms of a wearer as conventionally known in the art. However, Sessoms does not disclose a lower torso garment portion. Ross discloses a padded pair of spandex undergarment pants (1). (See Ross, col. 2, line 24) with a plurality of internal pockets (22,25,26,30 and 31) and protective pads (28 and 34) for insertion within the pockets therein. The lower torso pant garment is conventionally known to cover and protect a wearer's lower torso and legs. (See Ross, figures 1-3; col. 2, lines 37-62). The pockets cover "one" of those areas listed as claimed. However, Sessoms and Ross do not specifically disclose the pant garments to cover the entire body of the wearer including the upper torso and as being an integrally formed jumpsuit structure having upper and lower torso portions. McGee discloses constructing an integral upper and lower torso

Art Unit: 3765

, legs and arm covering jumpsuit garment to protect the entire body of a wearer in athletic activities and falls or to wear the garments as separate shirts, jackets or pants as desired. (See Mc Gee, col. 3, lines 15-21 and col. 1). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify ordinary garments of Sessoms and Ross to construct them in an integrally formed jumpsuit form as taught by McGee since it is well known to construct components into one integral garment for ease in donning and doffing and so that the garment is secured on the wearer during sports activities. McGee is only relied upon for the one piece garment construction and not the material specifics of the garment material itself.

#### **(10) Response to Argument**

**In regard to the rejection of claim 3 under 35 USC 103(a) under Sessoms (US 5,388,271) in view of Ross (US 5,134,726) and McGee (US 4,089,065), Appellant's sole argument is that it is not obvious to construct garment components into one integral garment for ease in donning and doffing the garment so that the garment is secured onto the wearer during sports activities (page 13 of Appeal Brief).**

Appellant has only re-stated the structure of the prior art and their invention and has not argued why the prior art of Sessoms, Ross and McGee do not clearly show that it would have been obvious to modify the structure of Sessoms to construct the garment

Art Unit: 3765

structure to additionally cover the lower torso of the wearer as in Ross and to do so in an integral form as described in Mc Gee.

As stated in the above rejection it is still the Examiner's position that Sessoms discloses an upper torso garment of a stretchable, elastic spandex material with a plurality of padded protective areas with the garment layers that form pockets as claimed. However, Sessoms did not specifically disclose extending the garment structure of Sessoms to the lower torso of the wearer. Ross disclosed the padded spandex undergarment with the plurality of internal pockets. Accordingly it would have been obvious to one having ordinary skill in the art to modify the Sessoms garment to include a lower torso portion to cover and protect the lower torso of the wearer and to do so in an integral configuration as disclosed by McGee that the garment is in a one piece construction that is easily donned and doffed by just jumping in it and pulling up the jumpsuit on to their lower and then upper torso body portions as desired and wherein the garment upper torso and lower torso portions are together instead of separate where they could be further separated and lost prior to a game. By providing an entire torso covering one piece padded jumpsuit as seen in Sessoms, Ross and McGee as outlined in the rejection of claim 3 above an entire athlete is protected and the garment is easily transported and stored wherein when it is not in use a loss of the garment is prevented.

The McGee patent is only relied upon for its one piece construction and not for the specific material specific to the McGee garment. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to

Art Unit: 3765

combine the components of Ross and Sessoms into a one piece garment as taught by McGee. The placement of the pads in pockets in the body areas claimed are disclosed by Ross and Sessoms. Additionally, one of ordinary skill in the art would have known to place protective pads and pockets over such areas such as body joints and tender areas like the thigh and chest area or any other body area desired. It is not new to place padded protectors in these area of the body. Sessom and Ross clearly show placing protective pads within pockets on undergarment to protect sports men.

Therefore, the addition of more pockets for covering any body area with padding would have been an obvious modification to one having ordinary skill in the art. Constructing the garment in a one piece construction is also known as discussed above in regard to McGee.

Therefore, the prior art rejection outlined above stands.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Gloria Hale,

/Gloria Hale/

Application/Control Number: 10/679,088

Page 8

Art Unit: 3765

Primary Examiner, Art Unit 3765

Conferees:

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Supervisory Patent Examiner, Art Unit 3765

/Nathan J. Newhouse/

Supervisory Patent Examiner, Art Unit 3782